

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
No. 4:02-CR-60-4H
No. 4:19-CV-12-H

BRUCE OKELLO JOSEPH,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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ORDER

This matter is before the court on petitioner's motion to reduce sentence pursuant to United States v. Simmons, 694 F.3d 237 (4th Cir. 2011), construed by the court as a motion to vacate pursuant to 28 U.S.C. § 2255, [DE #589]. This court directed the Federal Public Defender to review the matter and to show cause, if any, why petitioner's motion should not be construed as a § 2255 motion and dismissed as successive. [DE #592]. An Assistant Federal Public Defender filed a Notice of Appearance and a motion to withdraw as counsel together on the same day, informing the court that no motions would be presented pursuant to Simmons. [DE #593 and DE #594]. This court granted the motion to withdraw as counsel. [DE #595]. The government has not responded. The time for further filing has expired, and this matter is ripe for adjudication.

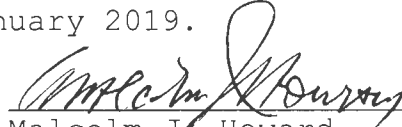
This action was initiated after the enactment and implementation of habeas corpus reforms contained in Title I of the "Antiterrorism and Effective Death Penalty Act of 1996." 28 U.S.C. § 2244(b)(3)(A) provides that before a second or successive habeas corpus application may be filed in the district court, the applicant must move the appropriate court of appeals for an order authorizing the district court to consider the application. 28 U.S.C. § 2244(b)(3)(A); see also 28 U.S.C. § 2255(h) (requiring successive motions to be certified by a panel of the appropriate court of appeals as provided in 28 U.S.C. § 2244).

The petitioner has filed at least one prior § 2255 claim, [DE #425]; therefore this court is without jurisdiction to review the matter until authorized to do so by the United States Court of Appeals for the Fourth Circuit. Petitioner's motion to vacate, [DE #589], is DISMISSED WITHOUT PREJUDICE to petitioner's right to apply to the Fourth Circuit for leave to file a successive § 2255 motion.

A certificate of appealability shall not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A petitioner satisfies this standard by demonstrating that reasonable jurists would find that an assessment of the constitutional claims is debatable and that any dispositive procedural ruling dismissing such claims is likewise

debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003);
Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d
676, 683-84 (4th Cir. 2001). A reasonable jurist would not find
this court's dismissal of Petitioner's § 2255 Motion debatable.
Therefore, a Certificate of Appealability is DENIED.

This 17th day of January 2019.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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